

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:04cr385
	.	
vs.	.	Alexandria, Virginia
	.	April 4, 2005
ALI AL-TIMIMI,	.	10:00 a.m.
	.	
Defendant.	.	<u>EXCERPT</u>
	.	
. . . . .	.	

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	GORDON D. KROMBERG, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and JOHN T. GIBBS, ESQ. Counterterrorism Section Criminal Division United States Department of Justice 601 D Street, N.W. Washington, D.C. 20004
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FOR THE DEFENDANT:	EDWARD B. MAC MAHON, JR., ESQ. 107 East Washington Street P.O. Box 903 Middleburg, VA 20118 and ALAN H. YAMAMOTO, ESQ. 643 S. Washington Street Alexandria, VA 22314
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ALSO PRESENT:	SA WADE AMMERMAN BOBBY WILLIAMS SA JOHN WYMAN
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR  
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3 401 Courthouse Square  
4 Alexandria, VA 22314  
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1 P R O C E E D I N G S

2 (Jury Panel and Defendant present.)

3 THE CLERK: Criminal Case 2004-385, United States of  
4 America v. Ali Al-Timimi. This matter comes on for trial by  
5 jury. Will counsel please note their appearance for the  
6 record.

7 MR. KROMBERG: Good morning, Your Honor. Gordon  
8 Kromberg and John Gibbs for the United States. With us at  
9 counsel table is FBI Special Agent John Wyman; FBI Special  
10 Agent Wade Ammerman; and our technological guru, Mr. Bobby  
11 Williams.

12 THE COURT: All right, good morning.

13 MR. MAC MAHON: Good morning, Your Honor. Edward  
14 MacMahon and Alan Yamamoto for Dr. Al-Timimi.

15 THE COURT: All right, good morning.

16 All right, Ladies and Gentlemen, as you know, this is  
17 the final round of jury selection. We're going to start by  
18 calling attendance. When you hear your number, please just  
19 stand and say "here" or "present," and then you may sit again.

20 THE CLERK: Juror No. 3.

21 THE PROSPECTIVE JUROR: Here.

22 THE CLERK: Juror No. 12.

23 THE PROSPECTIVE JUROR: Here.

24 THE CLERK: Juror No. 22.

25 THE PROSPECTIVE JUROR: Here.

1 THE CLERK: Juror No. 30.

2 (No response.)

3 THE CLERK: Juror No. 30.

4 THE PROSPECTIVE JUROR: Here.

5 THE CLERK: Juror No. 31.

6 THE PROSPECTIVE JUROR: Here.

7 THE CLERK: Juror No. 33.

8 THE PROSPECTIVE JUROR: Here.

9 THE CLERK: Juror No. 34.

10 THE PROSPECTIVE JUROR: Here.

11 THE CLERK: Juror No. 35.

12 THE PROSPECTIVE JUROR: Here.

13 THE CLERK: Juror No. 39.

14 THE PROSPECTIVE JUROR: Here.

15 THE CLERK: Juror No. 41.

16 THE PROSPECTIVE JUROR: Here.

17 THE CLERK: Juror No. 42.

18 THE PROSPECTIVE JUROR: Here.

19 THE CLERK: Juror No. 43.

20 THE PROSPECTIVE JUROR: Here.

21 THE CLERK: Juror No. 47.

22 THE PROSPECTIVE JUROR: Here.

23 THE CLERK: Juror No. 55.

24 THE PROSPECTIVE JUROR: Here.

25 THE CLERK: Juror No. 58.

1 THE PROSPECTIVE JUROR: Here.

2 THE CLERK: Juror No. 61.

3 THE PROSPECTIVE JUROR: Here.

4 THE CLERK: Juror No. 62.

5 THE PROSPECTIVE JUROR: Here.

6 THE CLERK: Juror No. 64.

7 THE PROSPECTIVE JUROR: Here.

8 THE CLERK: Juror No. 65.

9 THE PROSPECTIVE JUROR: Here.

10 THE CLERK: Juror No. 66.

11 THE PROSPECTIVE JUROR: Here.

12 THE CLERK: Juror No. 67.

13 THE PROSPECTIVE JUROR: Here.

14 THE CLERK: Juror No. 74.

15 THE PROSPECTIVE JUROR: Present.

16 THE CLERK: Juror No. 75.

17 THE PROSPECTIVE JUROR: Here.

18 THE CLERK: Juror No. 77.

19 THE PROSPECTIVE JUROR: Here.

20 THE CLERK: Juror No. 79.

21 THE PROSPECTIVE JUROR: Here.

22 THE CLERK: Juror No. 80.

23 THE PROSPECTIVE JUROR: Here.

24 THE CLERK: Juror No. 82.

25 THE PROSPECTIVE JUROR: Here.

1 THE CLERK: Juror No. 84.  
2 THE PROSPECTIVE JUROR: Here.  
3 THE CLERK: Juror No. 88.  
4 THE PROSPECTIVE JUROR: Here.  
5 THE CLERK: Juror No. 89.  
6 THE PROSPECTIVE JUROR: Here.  
7 THE CLERK: Juror No. 93.  
8 THE PROSPECTIVE JUROR: Here.  
9 THE CLERK: Juror No. 94.  
10 THE PROSPECTIVE JUROR: Here.  
11 THE CLERK: Juror No. 97.  
12 THE PROSPECTIVE JUROR: Here.  
13 THE CLERK: Juror No. 101.  
14 THE PROSPECTIVE JUROR: Here.  
15 THE CLERK: Juror No. 102.  
16 THE PROSPECTIVE JUROR: Here.  
17 THE CLERK: Juror No. 104.  
18 THE PROSPECTIVE JUROR: Here.  
19 THE CLERK: Juror No. 105.  
20 THE PROSPECTIVE JUROR: Here.  
21 THE CLERK: Juror No. 106.  
22 THE PROSPECTIVE JUROR: Here.  
23 THE CLERK: Juror No. 107.  
24 THE PROSPECTIVE JUROR: Here.  
25 THE CLERK: Juror No. 109.

1 THE PROSPECTIVE JUROR: Here.

2 THE COURT: Thank you, Ladies and Gentlemen. Now,  
3 the last thing is I want to ask all of you, on the front page  
4 of *The Washington Post* Metro section this morning, there was an  
5 article about this case. Have any members of the pool seen  
6 that article? No?

7 (Show of hands.)

8 THE COURT: Two of you have. Now, did you read it,  
9 or did you close it up as soon as you realized what it related  
10 to?

11 THE PROSPECTIVE JUROR: I closed it up as soon as I  
12 realized.

13 THE COURT: And your number?

14 THE PROSPECTIVE JUROR: 106.

15 THE COURT: All right, so you didn't read it at all?

16 THE PROSPECTIVE JUROR: No. I just started to glance  
17 at the first paragraph, and when I realized what it was, I  
18 stopped.

19 THE COURT: All right. And the other juror?

20 THE PROSPECTIVE JUROR: I saw it, and I saw the  
21 headline and did not read it.

22 THE COURT: And your name -- your number, rather?

23 THE PROSPECTIVE JUROR: 62.

24 THE COURT: Fine, thank you.

25 No one else has seen it?

1 THE PROSPECTIVE JUROR: Same thing. Saw the  
2 headline.

3 THE COURT: And your number just for the record?

4 THE PROSPECTIVE JUROR: 104.

5 THE COURT: 104? All right.

6 And?

7 THE PROSPECTIVE JUROR: 82.

8 THE COURT: 82. Again, 82, did you read it at all,  
9 sir?

10 THE PROSPECTIVE JUROR: No.

11 THE COURT: And how about in the back? Yes, sir?

12 THE PROSPECTIVE JUROR: 35. Same, did not read it.

13 THE COURT: Wonderful.

14 All right, one more?

15 THE PROSPECTIVE JUROR: 65.

16 THE COURT: 65, all right.

17 Now, this is the kind of thing I'm cautioning you  
18 about. Again, please avoid any exposure to media coverage.  
19 Again, extraneous information could be in such articles, and it  
20 would not be fair to the parties if you were to have that  
21 information and base any part of your decision on it. Very  
22 good.

23 Counsel, do we need to address anything? If not,  
24 we're going to start selecting the jury.

25 MR. MAC MAHON: Not from the defense, Your Honor.



1 MR. KROMBERG: Not from the government.

2 THE COURT: All right, what we're going to do, Ladies  
3 and Gentlemen, is randomly pull 14 numbers, and those will be  
4 the first 14 to be considered for service in the jury. So when  
5 you hear your number called, please come up and sit in the jury  
6 box.

7 THE CLERK: Juror No. 41, Juror No. 105, Juror No.  
8 89, Juror No. 43, Juror No. 31, Juror No. 34, Juror No. 94,  
9 Juror No. 12, Juror No. 62, Juror No. 97, Juror No. 109, Juror  
10 No. 104, Juror No. 39, Juror No. 22.

11 Will the following jurors please return to your seats  
12 in the courtroom: Juror No. 94, Juror No. 97, Juror No. 109,  
13 Juror No. 12, Juror No. 104, Juror No. 43, Juror No. 34, Juror  
14 No. 39.

15 Will the following jurors please have a seat in the  
16 jury box as instructed by the marshal: Juror No. 30, Juror No.  
17 61 --

18 THE PROSPECTIVE JUROR: I'm sorry, could you repeat  
19 that, please?

20 THE CLERK: 61.

21 Juror No. 107, Juror No. 67, Juror No. 47, Juror No.  
22 55, Juror No. 74, Juror No. 77.

23 Will the following jurors please return to your seats  
24 in the courtroom: Juror No. 74, Juror No. 47, Juror No. 77,  
25 Juror No. 67, Juror No. 61.

1 Will the following jurors please have a seat in the  
2 jury box as instructed by the marshal: Juror No. 58, Juror No.  
3 101, Juror No. 66, Juror No. 102, Juror No. 65.

4 Will the following jurors please return to your seats  
5 in the courtroom: Juror No. 102, Juror No. 66.

6 Will the following jurors please have a seat in the  
7 jury box as instructed by the marshal: Juror No. 75, Juror No.  
8 82.

9 Will the following juror please return to your seat  
10 in the courtroom: Juror No. 82.

11 Will the following juror please have a seat in the  
12 jury box as instructed by the marshal: Juror No. 33.

13 Ladies and Gentlemen, will you please stand, raise  
14 your right hands, and answer in the affirmative.

15 (Jury affirmed.)

16 THE COURT: All right, now, I want to thank the rest  
17 of the jury pool. We have now completed jury selection and  
18 have the 14 people who will hear this case. The rest of you,  
19 again, because this was your third appearance at court, we  
20 especially appreciate how diligent you have been about your  
21 service to this Court. That service is now complete. You are,  
22 of course, free to stay and watch the proceedings if you'd  
23 like, or you may leave. If you decide to leave, please check  
24 out with the Clerk's Office, and we again thank you for your  
25 attendance this morning.

1 All right. Now, Ladies and Gentlemen, we're going to  
2 be together for a while, and if Jurors No. 101 and 41 would  
3 look to your right, there should be a stack of notebooks next  
4 to your chair. If you would take one and hand one out to the  
5 rest of the jurors?

6 I'm giving you notebooks and pens because sometimes  
7 jurors like to take notes, and I want to make sure you feel  
8 comfortable doing so if that's what you would like to do. We  
9 will be together for at least a week, could be two or three, as  
10 I had warned you earlier, and so there'll be a lot of  
11 information, and if some of you find that note taking helps you  
12 keep focused, then feel free to do so.

13 I need to caution you, however, about note taking,  
14 because many judges don't permit jurors to take notes.  
15 Remember, none of you is a professional court stenographer, so  
16 you're not going to get everything down, so please don't let  
17 your note taking detract or distract you from paying attention  
18 during the trial. It's extremely important to be watching as  
19 well as listening during a trial.

20 When the witnesses are in the witness box, you not  
21 only want to listen to what they say but watch how they react  
22 to questions, look at body language, facial expressions. All  
23 of that kind of information does go into a jury's decision  
24 making.

25 It's also very important that you understand that the

1 way a trial is put together, information comes in at different  
2 points, and if you're writing everything down at the very  
3 beginning of the trial, you may wind up by the end being tired  
4 and not writing down that much, and, in fact, very important  
5 information comes in at the end and you might somehow think  
6 it's not as important because you don't have as many notes  
7 about it. So be very careful that you don't let your notes  
8 skew or mislead you, but if note taking helps you keep focused  
9 and pay attention, that's fine.

10 Now, your notes are your own individual memory aid.  
11 They are not evidence, and they're not to be shown or exchanged  
12 with the other jurors.

13 And at the end of the trial, I will tell the 12 of  
14 you who wind up deciding this case that you are 12 coequal  
15 judges. The fact that some of you may have taken extensive  
16 notes does not mean that that particular juror's opinion or  
17 memory of the evidence is any more or less worthy of respect or  
18 consideration than that of a juror who takes no notes or very  
19 few. You don't have to take notes. It's totally up to you.

20 You can put your names on your notebooks if you want,  
21 and any time we're in recess, whether overnight or for lunch,  
22 leave your notebooks on your chair. We'll get them back to  
23 you. But they shouldn't, obviously, go home with you, either.

24 Now, I just briefly want to give you a little  
25 overview about the structure of the trial, and then unless any

1 of you need a break, I'd like to go right into opening  
2 statements since I know you-all were sort of prepared to be  
3 here for the long run.

4 We have finished jury selection, and as soon as I  
5 finish talking, the next order of business will be opening  
6 statements. Opening statements are the time when the lawyers  
7 for each side can give you a brief overview as to what they  
8 expect the case will show.

9 You might think about an opening statement like the  
10 cover on the box of a jigsaw puzzle, if any of you are puzzle  
11 doers, because as you know, the puzzle, when all the pieces are  
12 put together, that's the picture. The picture on the box cover  
13 is what it looks like when everything is put together, except  
14 with opening statements, you will most likely get two very  
15 different box covers, and you might want to think about whether  
16 the pieces at the end of the trial make one box cover or the  
17 other or some different box cover.

18 Now, because the government in a criminal case has  
19 the burden of proof, the government goes first at each stage of  
20 the proceedings, so the government will make the first opening  
21 statement, and then the defendant will make his opening  
22 statement.

23 Now, anytime the lawyers are speaking to you, whether  
24 it's in their opening statements or at the end of the trial in  
25 their closing arguments or if they are raising an objection

1 with the Court or when they're asking a question of a witness,  
2 be extremely careful to remember that what lawyers say is not  
3 evidence, and if you think about it, it makes sense. A lawyer  
4 was not a witness to any of the events involved in this case,  
5 and the lawyers have not taken an oath or affirmation to tell  
6 the truth.

7           It is a lawyer's job to bring out the evidence by  
8 asking the appropriate questions of the appropriate witness and  
9 by introducing the appropriate pieces of evidence. So what  
10 lawyers do is obviously very important, but just be careful  
11 because if a lawyer makes a statement and you don't remember a  
12 witness saying that or a piece of evidence supporting it, then  
13 you should not accept the lawyer's statement as evidence.  
14 Evidence comes from different sources.

15           After we have the opening statements, then we turn to  
16 the evidence portion of the trial, and the evidence in this  
17 case is going to consist of three categories of information.  
18 First, I believe we have some stipulations, correct, counsel?

19           MR. KROMBERG: Correct, Judge.

20           THE COURT: All right.

21           MR. MAC MAHON: Yes, Your Honor.

22           THE COURT: And a stipulation basically is a fact  
23 which both sides agree or stipulate to, so there's not going to  
24 be any evidence actually presented at trial to establish that  
25 fact, and the jury will be told what facts the lawyers have

1 stipulated to, and the jury is therefore free to accept those  
2 facts, although as the fact-finders, you can reject facts that  
3 are stipulated to. That's within your province, but you're not  
4 going to get evidence to establish that fact because the  
5 lawyers are satisfied that that fact is established.

6 Now, the next quantum of information is testimonial  
7 evidence. That will come, obviously, from witnesses. The way  
8 we go is that the side that calls the witness, so since the  
9 government goes first, it will put its witnesses on first, so  
10 they will call their witnesses, and the first witness will come  
11 in the witness box, be placed under affirmation, and be asked  
12 all the questions which the prosecutor has for that witness.

13 When the prosecutor has finished asking questions,  
14 then the defense may cross-examine that witness. After the  
15 cross-examination, if the prosecution believes that some issues  
16 have been raised during cross that need to be addressed, they  
17 may ask another round of questions called redirect, and the  
18 rules permit the defense to have one last round of questioning,  
19 called recross, which is limited to the scope of the redirect.

20 Then that witness is finished, and we will go to the  
21 next witness, and we will go that way until the government has  
22 called all of its witnesses.

23 The government may also be introducing evidence.  
24 There may be charts, e-mail messages, physical things, but  
25 that's what we call evidence, and that's also part of the

1 information you'll have for deciding this case.

2 Now, when the government has finished calling all of  
3 its witnesses and putting in all of its evidence, then you'll  
4 hear the government say that it rests. That means the  
5 government believes that it's put on all that it needs for its  
6 case. We turn then to the defendant.

7 Now, it's extremely important that you remember a  
8 primary principle of our criminal justice system is the  
9 presumption of innocence, and that is, although charged with a  
10 crime, a defendant when he walks into a court of law like this  
11 one comes in with an absolutely clean slate, with the  
12 presumption of innocence, and it is the government's burden to  
13 prove the guilt of the defendant, not the defendant's burden to  
14 prove his innocence.

15 So in our legal system, a defendant doesn't have to  
16 do anything. He does not have to produce any evidence  
17 whatsoever; but, of course, he may; and if he chooses to, then  
18 we would go the same order except reverse now; that is, each  
19 defense witness would first be questioned by defense counsel,  
20 then the government would cross, then defense counsel could  
21 redirect, and the government could recross; and we would go  
22 that way until all the defendant's witnesses and all the  
23 defendant's exhibits, if any, are introduced.

24 The government is allowed a brief rebuttal case, and  
25 in very rare circumstances the Court is permitted to allow a



1 surrebuttal by the defense, but at some point, all the evidence  
2 is finished. Then we go to closing argument.

3 Now, again, because the government has the burden of  
4 proof, it goes first and will make the opening closing  
5 argument, and the purpose of a closing argument is essentially  
6 to argue to you various inferences, summarize the evidence, and  
7 then draw the inferences from that evidence which that side  
8 wants you to draw.

9 After the government makes its opening closing  
10 argument, the defense makes its closing argument, and because  
11 the government has the burden of proof, the rules allow it to  
12 make a rebuttal closing argument.

13 Then it's my job as the presiding judge to give you  
14 more detailed instructions of the law that you will have to  
15 follow, and then we turn the case over to you for deliberation.

16 Now, during the course of the trial, one of the  
17 lawyers may object from time to time either to a question  
18 that's being asked of a witness or to a witness's answer or to  
19 a piece of evidence that the other side is trying to introduce.  
20 It is a lawyer's job to object when the lawyer believes that  
21 something is happening that violates one of the rules of  
22 evidence or procedure or possibly some previous ruling in the  
23 case.

24 It's my job to rule on such objections. If I agree  
25 with the objection, if I agree that there is a problem, you

1 will hear me say either "objection sustained" or "granted."  
2 Those words mean the exact same thing.

3 If I do not agree with the objection, I don't think  
4 there's a problem, I'll say either "objection denied"  
5 or "overruled," and those words mean the same thing.

6 Now, it's extremely important that you not hold  
7 against a particular side the fact that that side's attorney  
8 has made an objection, and you also should not try to draw any  
9 inference from how I've ruled on an objection. Just because I  
10 grant an objection doesn't mean I think that side should win or  
11 lose the case, or if I've denied or overruled an objection,  
12 that doesn't mean that that side should lose the case.

13 It's much like a referee in a sporting event who  
14 calls balls or strikes or fouls. It's done to keep the  
15 enterprise going by the rules and not done to help one side or  
16 hurt the other. So please keep that in mind.

17 Now, it's extremely important as jurors that you keep  
18 an open mind throughout the trial. You cannot start  
19 deliberating or making up your mind about any issue until you  
20 have received all of the information in the trial, all of the  
21 arguments of counsel, and my instructions. So you must keep an  
22 open mind as this case is progressing.

23 When you're on recess, you're certainly free to  
24 socialize among yourselves, chat about the weather, baseball,  
25 or anything else you want to, but don't talk about this trial

1 or the case because you might inherently start evaluating or  
2 judging issues, and that could make it more difficult for you  
3 to change your mind if down the road new evidence came in and  
4 you'd already made up your mind on something. So it's very  
5 important that you not begin any deliberation whatsoever.

6 I want to repeat again the caution I gave you as you  
7 were being considered for jury duty. It is extremely important  
8 that you avoid any media coverage whatsoever about this case.  
9 So be very careful. There may be some snippets about this case  
10 on television or on the radio tonight. Please, absolutely do  
11 what some of you've already done: The second you see that  
12 there might be something close, get away from it.

13 Make sure you do not conduct any investigation about  
14 this case. It's extraordinarily important, as I said earlier,  
15 that you decide this case solely on what you see and hear in  
16 this courtroom. If you think for any reason that somebody may  
17 have e-mailed you or tried to talk to you about this case in  
18 any respect, I want you to advise us immediately. I don't  
19 expect that's going to happen, but every now and then -- and it  
20 usually happens by accident in the courthouse -- you hear  
21 somebody talking about the case, and just let us know if that  
22 happens.

23 Now, because the lawyers are trained to try to avoid  
24 any appearance of any improper contact with a juror outside of  
25 the courtroom, if you should bump into one of the defense

1 attorneys or one of the prosecutors in the hall and they don't  
2 make friendly eye contact with you, please don't take that as  
3 an insult. They're trying to avoid anybody saying, oh,  
4 so-and-so was talking to a juror or making, you know, smiles at  
5 a juror, trying to get their favor, and so that's why they  
6 behave the way they do outside of the courtroom.

7 I'm not going to give you the same warning I've just  
8 given you this morning each day. This warning about not  
9 conducting any investigation and avoiding any media coverage  
10 carries through as long as you're a juror in this case. You've  
11 all been so diligent already, I'm sure you'll let me know if  
12 there are any problems or issues that arise.

13 And again, don't discuss this case with family  
14 members or anybody else. You can say you're on a jury, and  
15 that's it until this case is over.

16 All right, does anyone need a break, or can we go  
17 right into the opening statements?

18 (No response.)

19 THE COURT: All set? All right. Then, Mr. Kromberg  
20 or Mr. Gibbs, do you want to start?

21 MR. KROMBERG: Thank you, Your Honor.

22 MR. MAC MAHON: Your Honor, if I could, may we have a  
23 rule on witnesses, please?

24 THE COURT: Ah, thank you, yes. Anyone who's going  
25 to be a witness in this case other than the two case agents

1 must leave at this time and cannot be in the courtroom while  
2 any other witness is testifying, all right? Are any witnesses  
3 in the courtroom for either the government or the defense?

4 MR. KROMBERG: Not from the government, Judge.

5 MR. MAC MAHON: Thank you, Your Honor.

6 THE COURT: All right, that's fine.

7 \* \* \* \* \*

8

9 CERTIFICATE OF THE REPORTER

10 I certify that the foregoing is a correct excerpt of the  
11 record of proceedings in the above-entitled matter.

12

13

14

/s/  
\_\_\_\_\_  
Anneliese J. Thomson

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